



Special Investigating Unit Presentation to Portfolio Committee on Communications on the investigations at SABC

Proclamations No R29 of 2017 extended by R19 of 2018



27 November 2018



Overall Project Milestones



Proclamations No R29 of 2017 extended by R19 of 2018

- **Proclamation No R29 of 2017**
 - Interim Presidential Report: Submitted on 21 September 2018
 - Final Presidential Report: Due on 30 April 2019
- **Proclamation No R19 of 2018 (SABC Security Contract)**
 - Interim Presidential Report: Due on 30 November 2018
 - Final Presidential Report: Due on 31 March 2019



STATUS OF THE SIU INVESTIGATION AT SABC



- The SIU adopted a phased approach as the investigation methodology due to the significant volume of matters to be investigated. Proclamation No R29 of 2017 has been divided into Phase 1 and Phase 2.
- This presentation summarises the outcomes of the 18 matters that the SIU investigated in Phase 1 and will provide an update on the status of all the Phase 2 matters as covered by Proclamation No R29 of 2017.
- We shall also present on the additional SABC proclamation, No R19 of 2018 which extends proclamation R29 of 2017 to cover the award of the SABC Security Tender.



Phase 1 Project Progress



Detailed investigation complete

15 December 2017

Section 5(2)(c) hearings

28 February 2018

Referrals done

31 March 2018

Investigation Report and Closure Memo complete

30 April 2018

Interim Presidential Report to Office of the President on Proclamation R29 of 2017

Submitted 21 September 2018

CURRENT PROGRESS



Phase 1 Investigation Progress





STATUS OF THE SIU PHASE 1 INVESTIGATION AT SABC



In summary the SIU found evidence that indicated that there were irregularities in the awarding of the following contracts:

- Vision View Productions CC,
- SekelaXabiso CA Incorporated,
- Lornavision (Pty) Ltd,
- Lezaf Consulting,
- Gekkonomix (Pty) Ltd (trading as Infonomix),
- Asanta Sana (Pty) Ltd,
- Foxton Communicating (Pty) Ltd and
- Mott MacDonald (Pty) Ltd.



STATUS OF THE SIU PHASE 1 INVESTIGATION AT SABC



Evidence obtained also indicated that there were irregularities in the:

- awarding of the success fee to Mr Motsoeneng,
- as well as various appointments and salary increases awarded by Mr Motsoeneng.

SIU also confirmed the Public Protector's findings that the following appointments of SABC staff/and or salary increases were irregular; Ms Sully Motsweni, Ms Thobekile Khumalo and Ms Guga Duda.

The SIU found no evidence to support the allegations of irregularities regarding the appointments of other officials.



STATUS OF THE SIU PHASE 1 INVESTIGATION AT SABC



As a result of the investigation conducted by the SIU, court ready evidence was gathered and compiled, along with draft charges for the following 38 matters in respect of the outcomes of the investigations detailed below:

- This consists of civil litigation that was instituted in five matters, with an additional three at Senior Counsel who are drafting the court papers,
- the provision of evidence to the SABC to assist in defending one civil matter,
- 6 criminal referrals, and
- 23 disciplinary referrals.

The investigation has produced evidence to initiate the civil litigation instituted in the name of the SIU and SABC in **five High Court matters** to the value of just over **R166 million** and has referred 3 matters to the value of **R200 million** to Counsel who are preparing court papers. The SIU also provided evidence to defend the Asanta Sana claim for R350 000 on 19 March 2018.

<u>Name of matter</u>	<u>Value of litigation</u>	<u>Case No.</u>	<u>Referral Date</u>
George Hlaudi Motsoeneng	R21 744 002.32	18/04253	7 February 2018
SekelaXabiso	R9 816 023.52	17/49870	25 April 2018
Vision View	R52 000 000	18/15870	23 April 2018
Lornavision and James Aguma	R62 733 556.61	17/49514	27 June 2018



REFERRALS TO DATE CIVIL LITIGATION



<u>Name of matter</u>	<u>Value of litigation</u>	<u>Case No.</u>	<u>Referral Date</u>
Confidential	To be determined contract value is R52 000 000	To be advised once papers issued	4 April 2018
Confidential	R4 550 000	To be advised once papers issued	8 August 2018
Audrey Raphela	R20 106 969.20	53069/2018 (urgent application successfully freezing pension benefits) & 70881/2018 (main application)	19 September 2018
Confidential	R144 551 738.16	To be advised once papers issued	26 October 2018



REFERRALS TO DATE

NPA



The investigation has produced evidence to support the 6 criminal referrals to the National Prosecuting Authority, the details of the matter below can be shared as the suspect, a former SABC Executive, has been charged;

<u>Name of matter</u>	<u>Charges</u>	<u>Referral Date</u>	<u>Updated status</u>
Sully Miranda Motsweni	Fraud - R18 290.12	27 March 2018	Trial set down for 12 April 2019

In respect of the other 5 matters they involve private companies who contracted with SABC, it's Director and a 3 former SABC Executives, the combined value of the cases is approximately **R82 million**. The charges are fraud and contravention of the Companies Act and the PFMA. The referrals were done in May, September and November 2018. The SIU has arranged with the NPA for a dedicated prosecutor to deal with all the SABC prosecutions.



REFERRALS TO DATE DISCIPLINARY



The investigation has produced evidence to support the following **23 disciplinary referrals** arising out of the matters investigated. The evidence implicates 14 officials whom have all been charges, involving 6 SABC Executives and 8 SABC officials, 7 of these matters have been finalised. The impact of the SIU's disciplinary referrals has been the exiting of the following:

5 SABC Executives no longer with the SABC:

- 1 found guilty of disciplinary charges and dismissed
- 1 found guilty of disciplinary charges; final written warning issued and then resigned
- 2 resigned in the face of SIU disciplinary
- 1 contract expired and not renewed

2 SABC Officials dismissed:

- 2 found guilty of disciplinary charges and dismissed



REFERRALS TO DATE DISCIPLINARY



<u>SABC Official</u>	<u>Matter</u>	<u>Position</u>	<u>Referral Date</u>	<u>Updated Status</u>
Mr Kubendhran Padayachee	Vision View	Acting Group Executive: Technology	29 November 2017	Resigned in face of DC 31 May 2018
Sully Miranda Motsweni	Vision View/Travel Fraud and Award of SABC Foundation Bursary	Group Executive: Sport	29 March 2018 29 March 2018	Dismissed 4 July 2018



REFERRALS TO DATE DISCIPLINARY



<u>SABC Official</u>	<u>Matter</u>	<u>Position</u>	<u>Referral Date</u>	<u>Updated Status</u>
Bessie Tugwana	Vision View	Acting Chief Operating Officer	26 March 2018	Contract expired 31 March 2018 and was not renewed
Simon Molaudzi	Vision View SekelaXabiso Gekkonomix	Head of Procurement: SABC Radio Park	09 April 2018 08 May 2018 21 June 2018	Dismissed on 5 October 2018 Lodged an appeal



REFERRALS TO DATE DISCIPLINARY



<u>SABC Official</u>	<u>Matter</u>	<u>Position</u>	<u>Referral Date</u>	<u>Updated Status</u>
Audrey Raphela	SekelaXabiso Gekkonomix	Acting Chief Financial Officer	7 May 2018 29 June 2018	Resigned in face of disciplinary action on 10 July 2018 *Note: Pension fund frozen and civil/criminal litigation ongoing
Anand Moodliar	Vision View	Group Secretary	30 May 2018	Found guilty. Final written warning issued on 16 September 2018.



REFERRALS TO DATE DISCIPLINARY



<u>SABC Official</u>	<u>Matter</u>	<u>Position</u>	<u>Referral Date</u>	<u>Updated Status</u>
Tshifhiwa Mulaudzi	Gekkonomix	Group Executive: Commercial Enterprises	17 July 2018	Found guilty, final written warning issued on 29 October 2018. Since resigned.
Ayanda Mkhize	Gekkonomix	General Manager: Supply Chain Management, Governance and Special Projects	17 July 2018	Dismissed on 17 October 2018



Details of civil litigation instituted by the SIU



James Aguma and Lornavision (Pty) Ltd (collection of TV Licence fees)

Civil recovery:

- The Lorna Vision contract has been set aside by the High Court. On 11 May 2018 the SIU submitted evidence to the SABC's attorneys (Werksmans) in support of a civil claim against Lornavision and Aguma to recover the **R62 733 556.61**.
- The SABC has issued summons against both parties and the SIU has filed an application to join the proceedings. Lornavision has filed a second exception.
- The Heads of Argument are being filed.
- We await the allocation of a date for hearing the intervention application.
- The SIU will explore all avenues to expedite this matter, including a request for an expedited hearing date to the Deputy Judge President once the Heads of Argument have been filed.

Vision View Productions CC (Multi-purpose studio)

Civil recovery:

- On 24 April 2018 the SIU and SABC filed a Notice of Motion to have the contract between itself and Vision View set aside (Case number 18/1587).
- Vision View filed its answering affidavit on 29 May 2018. A replying affidavit was served on 12 June 2018.
- To date the SABC has paid Vision View R34 444 729.28 of the total contract amount of over R52 million.
- On 9 November 2018 the SIU was successful and judgement was handed down by the High Court setting the contract between the SABC and Vision View aside.
- The court ordered the parties to refer the determination of just and equitable remedy to arbitration, which will ensure that Vision View does not profit from this contract.



SEKELAXABISO CA INCORPORATED



The SIU is investigating all contracts concluded between 2 August 2012 and 22 December 2016

Contract Start Date	Contract End Date	Value of Contract	Services to be provided	Paid to date
02/08/2012	31/03/2013	R196 963.00	Delivery of PFMA training for SABC	R177 635.00
21/10/2014	17/02/2015	R4 468 245.35	Forensic Investigations into Television and all Marketing areas of the SABC	R4 468 245.35
16/04/2015	06/07/2015	R4 797 596.00	Comprehensive evaluation of expenditures transactions processed during period 2010/11 to 2014/2015 to determine irregular, fruitless and wasteful expenditures	R4 797 596.00
28/04/2015	06/07/2015	R1 800 000.00	Continuation of Forensic Investigation into the Television and Marketing	R1 800 000.00
03/12/2015	30/07/2016	R10 395 375.20	Detection of irregular, fruitless and wasteful expenditure	R10 395 375.20
03/10/2016	31/03/2017	R9 816 023.52	Detection of irregular, fruitless and wasteful expenditure 2014/15 and 2015/16	R3 000 000.00
TOTAL		R31 474 203.07		R24 638 851.55



SekelaXabiso CA Incorporated (Audit services)

Civil recovery:

- The SABC referred the matter to court for reviewing and setting aside of the irregularly awarded latest contract which was entered into with SekelaXabiso on 23 December 2016 to the value of R9 816 023.52 and the SIU successfully joined the litigation.
- The notice of motion was issued on 22 December 2017 against SekelaXabiso in the High Court of South Africa, Gauteng Local Division, Johannesburg. Case number 17/49870 refers. The status of the civil litigation is that the parties are currently exchanging pleadings.
- All affidavits have been filed and Heads of Argument due next. Once filed, a hearing date will be allocated. The SIU will explore all avenues to expedite this matter, including a request for an expedited hearing date to the Deputy Judge President.

Civil recovery: The SIU and SABC jointly issued summons on 5 February 2018 in the High Court of South Africa, Gauteng Local Division, Johannesburg against Mr Motsoeneng. The civil case consists of two claims,

- firstly for the recovery of R11 508 549.12 in terms of the success fee that was paid and
- secondly for the recovery of R10 235 453.20 for the irregular appointments and salary increments; suspensions and unlawful terminations of employment.

The civil litigation process is underway and case number 18/04253 refers. Mr Motsoeneng entered an appearance to defend and raised an Exception to the Particulars of Claims. SIU to request an expedited court date from the DJP to argue the exception. It is anticipated that additional claims will be added to this main claim as the SIU concludes its investigations.

Disciplinary and criminal referrals: The SIU is in the process of finalising this aspect of the investigation. Questionings in terms of the SIU Act, section 5(2)(c) were held in November 2018 to conclude this aspect of the investigation.



MS SULLY MOTSWENI – FRAUD CASE



Criminal referral: The evidence obtained indicated that the offence of fraud was committed in relation to eleven fraudulent travel claims that Ms Motsweni and her relatives benefitted from to the value of R45 184.56. The evidence obtained was referred to the National Prosecuting Authority on 5 April 2018. The SIU, working with the SAPS Commercial Crime Unit, registered a criminal case at the Brixton Police Station on 15 May 2018 with the SAPS case number CAS156/5/2018. On 30 May 2019 Ms Motsweni appeared in the Commercial Crime Court in Johannesburg on 11 counts of Fraud. She was released on R5 000 bail, she appeared again on 20 June 2018 and the court case was postponed to 26 July 2018 for further particulars. The criminal trial has been set down for 22 November 2018 and was postponed to 12 April 2019. The SIU is working closely with the SAPS and NPA and will continue to monitor the progress on this case.

Recovery: The recovery of the amount of R45 184.56 and any other monies owed by Ms Motsweni to the SABC will be dealt with as part of the pending criminal processes.



MULTICHOICE CONTRACT



The SIU has determined that the contract with MultiChoice was ending in July 2018. A new contract has been entered into from 1 September 2018 for 5 years.

The investigation has been focussing on the following areas:

- Legality of the agreement which ended in July 2018 (including subsequent amendments), including whether any provisions of the following were contravened or not complied with the relevant encryption policy and/or related policies, the Broadcasting Act No 4 of 1999, any code of conduct for broadcasting services (e.g. as prescribed in terms of the Electronic Communications Act No. 36 of 2005), the Prevention and Combatting of Corrupt Activities Act, No.12 of 2004 and the Public Finance Management Act, No. 1 of 1999.
- The roles played by individuals involved in the process and whether any of them benefited unduly.



MULTICHOICE CONTRACT



- Whether the agreement was viable and/or in the best interests of the SABC.
- Whether the SABC has in fact received all payments due to it.
- Good progress has been made and numerous affidavits and other evidence have been obtained from a wide spectrum of witnesses.
- Important additional issues have been identified in the process, which are also being pursued.
- This includes issues such as whether MultiChoice and/or the SABC's own delegates/negotiation team has fraudulently induced the SABC Board into the approval of the agreement by means of failure to disclose information of material significance to them.



PHASE 2 PROJECT MILESTONES



**Detailed investigation commence
and Section 5(2)(c) hearings**

1 June 2018 to 28 February 2019

**(Start delayed by 1 month due to
extended Phase 1 hearings)**

**Referrals
completed**

**31 March
2019**

**Closure
Memos
completed**

**31 March
2019**

**Final
Presidential
Report to
Office of the
President for
Proclamation
R29 of 2017
30 April 2019**

CURRENT PROGRESS



Phase 2 Investigations





PHASE 2 LIST OF INVESTIGATIONS



The following matters are being investigated in Phase 2:

- TNA
- SABC Security tender
- Irregular appointments of 7 SABC Officials;
- Irregular payment of bonuses;
 - 13th cheques to Senior Managers; and
 - R31 million paid for the R10 000 to 3124 staff
- Irregular Expenditure;
 - R5 million SARS penalty; and
 - Validity of a sample of Tax Clearance Certificates.
- Conflicts of Interest.

The following matters are being investigated in Phase 2:

- Legends payments of R2,4 million paid to 53 artists;
- SABC Heritage/Thank you Concert +- R27 million;
- Rapid Blue: X-Factor Season 1;
- Irregularities regarding the Lease of the SABC Offices in Nelspruit;
- Irregular payment of Mr Motsoeneng's R1,2 million legal fees; and
- Various allegations at the North West SABC Office including the:
 - appointments of the Provincial General Manager and
 - the Provincial News Editor,
 - officials doing business with SABC,
 - Corruption, and
 - abuse of SABC resources.

SABC Security Contract

- The amendment to the SABC Proclamation No R29 of 2017 was published on 6 July 2018, proclamation No R19 of 2018 refers.
- SIU was only then able to access its powers in terms of the SIU Act to investigate the award of this contract valued at R185 519 425.67 as well as the allegations of corruption.
- The SIU has found that:
 - The contract was awarded irregularly,
 - There was financial misconduct and contravention of section 86(3) of the PFMA and contravention of sections 38 and 45 of the PFMA for failing to act in the best interest of the SABC.



SABC Security Contract

- The SIU is preparing the above mentioned disciplinary and criminal referrals
- The SIU has briefed Counsel on 30 October 2018 to join the proceedings as the second applicants against the SABC (case no 47916/2017). The SIU will request the court to set the contract between the SABC and Mafoko Security Patrols aside. The SIU will also request a just and equitable order seeking to recover monies lost.
- The SIU submitted a Status update on 14 September 2018 to the Chairman.
- Correspondence was also provided on 10 October 2018 to the court indicating the anticipated submission dates of the SIU's Presidential Report, which are: Interim Report – 30 November 2018 and Final Report – 31 March 2019.



PHASE 2 INVESTIGATIONS



TNA Breakfasts Contract

- TNA has filed for liquidation and the matter is in the liquidators hands.
- TNA initiated arbitration proceedings against the SABC i.r.o losses in the amount of R144 551 738.16 allegedly suffered due to the SABC's repudiation of a "Renewal Agreement" between the SABC and TNA.
- As a result and with a view to defend the claim, the SABC brought an application to have the contract reviewed and set aside. The SIU is joining the SABC's claim to have the contract declared void ab initio.



PHASE 2 INVESTIGATIONS



TNA Breakfasts Contract

- The SIU has obtained significant evidence to support the abovementioned application and has submitted the Brief to Counsel on 26 October 2018.
- The investigation is ongoing to establish:
 - the irregularity of the contract and then
 - to determine and establish what the unlawful benefit that TNA benefitted from the irregular contract.
 - The irregular payments to TNA by state institutions.
- The SIU may apply for a further proclamation to extend the investigation to include the sponsorships given to TNA by other SOE's and government entities.



The role of the SABC Boards and Executive Directors

- As part of the overall SIU investigation, the evidence and findings of all the individual investigations are being collated and considered by the SIU, with a view to the SIU and SABC, bringing an application under section 162 of the Companies Act of 2008, to declare the former SABC Board members delinquent directors and to have them placed under an order of probation for failing to act in the best interests of the SABC.
- The SIU is investigating possible contraventions of The Prevention and Combatting of Corrupt Activities Act at all levels within the SABC including the Boards.
- The SIU is also considering remedial action against individuals where governance failures have occurred and reporting requirements have not been complied with.

Adv. JL Mothibi

THANK YOU